REMARKS/ARGUMENTS

Amendments

Before this Amendment, claims 25, and 27-32 were present for examination. Claims 1-24, and 26 were previously cancelled. No new claims are added. Therefore, claims 25 and 27-32 are present for examination, and claims 25, 27, and 32 are the independent claims. Applicants respectfully request reconsideration of this application.

35 U.S.C. §103(a) Rejection, Liston, Hamblin

The Office Action rejected claims 25 and 27-32 under 35 U.S.C. §103(a) as being unpatentable over the cited portions of Liston, U.S. 3,817,425 ("Liston") in view of the cited portions of Hamblin et al., U.S. 6,607,522 ("Hamblin").

The Office Action appears to operate under the impression that the second syringe 280 of Liston dispenses material into the first syringe 290 of Liston. Applicant respectfully notes, however, that Liston does not operate in this fashion. Rather, a close reading of Liston shows that it operates by "charging" the larger syringe 290 with a reagent liquid and then discharging this reagent liquid through the smaller syringe barrel into a cuvette for mixture with another liquid in the cuvette. At no time it appears do the large syringe and small syringe contain different liquids that are mixed together. This can be seen for example at column 7, lines 44-60. This section from Liston is quoted below:

> "After the probe assembly is in its charge position and after valve element 302 has rotated to the position shown in FIG. 10, the pin inserted in hole 350 of pinion gear 348 (FIG. 14) engages an end of slot 345, thereby causing the pinion gear to rotate. When the pinion gear rotates, it drives rack 322 and carriage 312 in a downward direction (FIG. 11). Since carriage 312 is attached to plunger 294 and valve 300, the plungers of the syringes are pulled away from the syringe barrels, thereby enlarging the cavities defined by the syringes. In this mode of operation, a small amount of fluid is

drawn from test tube 140 through end point 261 of the probe assembly into nozzle 262. Normally, the amount of fluid is approximately 10 microliters. At the same time, reagent fluid is drawn from reservoir 272 through tube 275, valve element 302, and tube 298 into the cylinder of syringe 290."

See Liston at column 7, lines 44-60.

The above quotation from Liston explains how the larger syringe 290 is charged with reagent fluid. The following quotation from Liston explains how the reagent is then discharged into the cuvette chamber where mixing takes place:

"As a result, plungers 284 and 294 are moved into barrels 281 and 291 of syringes 280 and 290, respectively. This movement reduces the size of the cavities defined by syringes 280 and 290 so that the sample fluid located in probe assembly 260 is expelled into cuvette compartment 83, and the reagent fluid held in cylinder 295 is expelled through tube 298, valve 300, plunger 284, cylinder 283 of microsyringe 280, tube 226, and probe assembly 260 into cuvette compartment 83. The carriage continues to move upward until microswitch 363b is operated by stop member 321, thereby terminating signal D2 and stopping the carriage. The foregoing method of discharge is an important feature, since the reagent fluid is passed through the microsyringe 280, tube 226, and the probe assembly after the fluid sample from the test tube has been expelled into the cuvette compartment. This operation purges these components of the sample fluid, thereby preparing the system to mix another sample with an additional quantity of the reagent fluid. In order to provide adequate purging, the amount of reagent fluid discharged through the probe assembly should be at least 10 times as great as the amount of sample fluid discharged. The

proper ratio of reagent to sample fluid is provided by adjusting the relative sizes of the microsyringe and macrosyringe. "

"The curved bottom and angled sidewalls of cuvette 30 cause the fluid discharged by the probe assembly to be mixed in each cuvette compartment by a swirling action."

See Liston at column 8, line 60 - column 9, line 21.

Thus, it is clear that Liston does not actually disclose that any material is added to the larger syringe from the smaller syringe. Furthermore, Liston does not teach that mixing takes place in the larger syringe. Therefore, with respect to claim 25, the combination of Liston and Hamblin fail to teach, for example, the elements of "utilizing a second syringe to add protein material to said first syringe barrel" and "mixing said lipid material and said protein material in said first syringe barrel to form said LCP in said first syringe barrel."

Similarly, with respect to claim 27, the combination of Liston and Hamblin fail to teach, for example, the claim elements "mixing said lipid material and said protein material in said syringe barrel to form said LCP in said syringe barrel" and "transferring said protein material and said lipid material to said second syringe." Liston teaches that a single is held in the larger syringe and that it is expelled into the cuvette. See Liston at column 8, line 60 - column 9, line 21. Therefore, it is believed that claim 27 is in condition for allowance as written. For at least the same reasons, dependent claims 28-31 are also believed to be in condition for allowance.

Finally, with respect to claim 32, the claim element "mixing said lipid material and said protein material in said syringe barrel to form said LCP in said syringe barrel" is not satisfied by the combination of Liston and Hamblin as noted earlier. Furthermore, it is well-recognized that when combining references to establish a rejection under 35 USC §103 that the

combination must allow the references to still work for their intended purpose. It appears that the intended purpose of a highly automated reagent system of Liston could not be accomplished if the additional steps of "growing a protein crystal from said LCP material and said crystallization promoting material in said container"; and "drying said crystallization promoting material prior to said dispensing said LCP material in said container" were employed.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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